

*United States Court of Appeals
for the Second Circuit*



APPENDIX

ORIGINAL 75-7516

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United States Court of Appeals For the Second Circuit.

ROBERT G. BURDEWICK, individually and as representative of the
Nassau County Patrolmen's Benevolent Association,
Plaintiff-Appellant,

against

DENIS E. DILLON, District Attorney of the County of Nassau,
State of New York, RALPH G. CASO, County Executive in and
for the County of Nassau, State of New York, and LOUIS J.
FRANK, Commissioner of Police, Nassau County of the State of
New York,

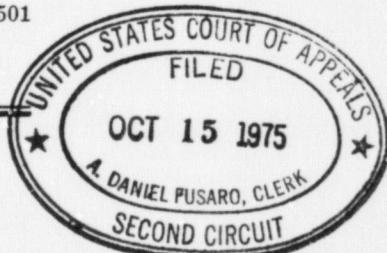
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.

HARTMAN & ALPERT,
Attorneys for Plaintiff-Appellant,
300 Old Country Road,
Mineola, N. Y. 11501
(516) PI 2-9000.
JOHN F. O'SHAUGHNESSY,
County Attorney of Nassau County,
Attorney for Defendant-Appellee,
Nassau County Executive Building,
West Street,
Mineola, N. Y. 11501

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 782-6978—1975
(7470)



PAGINATION AS IN ORIGINAL COPY

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1a

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

ROBERT G. BURDEWICK, individually and as representative
of the Nassau County Patrolmen's Benevolent Asso-
ciation.

Plaintiff-Appellant.

-against-

DENIS E. DILLON, District Attorney of the County of Nassau, State of New York, RALPH G. CASO, County Executive in and for the County of Nassau, State of New York, and LOUIS J. FRANK, Commissioner of Police, Nassau County of the State of New York.

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of New York.

DOCKET ENTRIES.

75C 350

BURDEWICK vs. DILLON, et al

DATE	NR.	PROCEEDINGS	
3-7-75		Complaint filed. Summons issued.	(1)
3/18/75		Summons retd and filed. Executed.	(2)
4/2/75		Notice of motion for summary judgment filed ret. 4/25/75 at 10:00 A.M. - Deft's memorandum of law filed	
4/24/75		Affidavit in Opposition to Deft's Motion filed	(3)
4/24/75		Memorandum of Law of Pltff filed.	(5)
4-25-75		Before BARTELS, J.-Case called. Deft's motion for summary judgment argued. Decision reserved.	(6)
5-5-75		Affidavit bf Louis J. Frank filed.	(7)
8-15-75		By BARTELS, J.--MEMORANDUM AND ORDER filed. The defts' motion for summary judgment is granted and the complaint is dismissed.	(8)
8-18-75 (8)		JUDGMENT dtd 8-18-75 dismissing complaint filed.(p/c mailed to pltff).	
9/2/75		NOTICE OF APPEAL FILED.	(9)
9/29/75		Duplicate of Notice of Appeal and docket entries mailed to the C. of A.	(1)

3a

SUMMONS.

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 750 350

ROBERT G. BURDEWICK, individually and
as representative of the Nassau County
Patrolmen's Benevolent Association,

Plaintiff

v.

DENIS E. DILLON, District Attorney of the
County of Nassau, State of New York, RALPH
G. CASO, County Executive in and for the
County of Nassau, State of New York, and
LOUIS J. FRANK, Commissioner of Police,
Nassau County of the State of New York
Defendants

SUMMONS

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SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

RICHARD HARTMAN, ESQ.

plaintiff's attorney , whose address 300 Old Country Road, Mineola, New York

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Lewis Sigel
Clerk of Court.

Donald J. Glavin
Deputy Clerk.

Date: March 7, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROBERT G. BURDEWICK, individually and as
representative of the Nassau County
Patrolmen's Benevolent Association,

Plaintiff,

-against-

COMPLAINT

DENIS E. DILLON, District Attorney of
the County of Nassau, State of New York,
RALPH G. CASO, County Executive in and
for the County of Nassau, State of New
York, and LOUIS J. FRANK, Commissioner
of Police, Nassau County' of the State
of New York,

CIVIL ACTION
FILE NO.

Defendants.

-----x

The Plaintiff, complaining of the Defendants, by his
attorney, RICHARD HARTMAN, ESQ., does herein allege:

1. This is an action seeking to redress the deprivation
under color of statute, ordinance, regulation, custom or usage
of a right, privilege or immunity secured to the Plaintiff by
the First and Fourteenth Amendments to the Constitution of the
United States and by Title 42, United States Code, Chapter 21,
and for other injuries arising under the law and statutes of
the State of New York, and Plaintiff therefore invokes the
pendant jurisdiction of this Court.

2. The jurisdiction of this court is invoked under 28
United States Code, Section 1343, subdivision 3, this being an
action authorized by law to redress the deprivation, under the
ordinance, custom and usage, of a right, privilege and immunity

COMPLAINT

secured to the Plaintiff by the First and Fourteenth Amendments to the Constitution of the United States.

3. That at all of the times hereinafter mentioned, Plaintiff, ROBERT G. BURDEWICK, was and still is a member of the Police Department of the County of Nassau, having been appointed to said position on the 2nd day of January, 1957.

4. Upon information and belief, that at all times herein-after mentioned, the Defendant, DENIS E. DILLON, was the duly elected District Attorney of Nassau County, New York, and LOUIS J. FRANK was the duly appointed Commissioner of Police, Nassau County, State of New York, and are responsible for enforcing Section 426, Subdivision 3 of the Election Law, State of New York, a copy of which is annexed hereto as Exhibit "A", and made a part hereof.

5. Upon information and belief, that at all times herein-after mentioned, the Defendant, RALPH G. CASO, was the duly elected County Executive in and for the County of Nassau, State of New York, and LOUIS J. FRANK was the duly appointed Commissioner of Police, Nassau County, State of New York, both being responsible for enforcing Section 8-14.0b of Chapter VIII of the Administrative Code of Nassau County, a copy of which is annexed hereto as Exhibit "B", and made a part hereof.

6. That Section 426, Subdivision 3 of the Election Law

COMPLAINT

of the State of New York, unjustifiably discriminates against police officers as a class from participating in everyday political affairs in direct violation of the First and Fourteenth Amendments of the United States Constitution. (A copy of said section is annexed hereto as Exhibit "A").

7. That Section 8-14.0b of the Administrative Code in and for the County of Nassau, unjustifiably discriminates against police officers as a class from participating in everyday political affairs in direct violation of the First and Fourteenth Amendments of the United States Constitution.

8. That although the Plaintiff, ROBERT G. BURDEWICK, has not been prosecuted for violating Section 426 subdivision 3, of the Election Law of the State of New York nor Section 8-14.0b of the Administrative Code in and for the County of Nassau, nor has the Plaintiff been deemed to have vacated his office, pursuant to the language of said Section 8-14.0b, the Plaintiff, ROBERT G. BURDEWICK, does desire to seek and accept a position as a member of the school board of the North Merrick Union Free School District, but Plaintiff has refrained therefrom out of fear of being in direct violation of Section 8-14.0b of the Administrative Code in and for the County of Nassau, as well as in violation of Section 426 subdivision 3 of the Election Law of the State of New York, and thus be placed in jeopardy of losing his job as well as being prosecuted criminally for said acts.

9. That to date, Plaintiff sought to fill a vacancy on the North Merrick School Board that was vacant as of

COMPLAINT

November, 1974, as evidenced by a letter dated November 15, 1974, a copy of which is annexed hereto as Exhibit "C".

10. With regard to said vacancy, Plaintiff sought a determination from his employer, the Nassau County Police Department, with regard to the legality of his accepting and/or running for a position on the school board, with the result being that the Commissioner of Police advised the Plaintiff herein that he would be in violation of Section 8-14.0b of the Nassau County Administrative Code if he chose to remain as a Police Officer and sought said position, (Annexed hereto as Exhibit "D" is a copy of a November 19, 1974 letter evidencing the above).

11. That it is Plaintiff's desires to actively seek appointment to the North Merrick School Board, as well as participate in those "political activities" normally associated with such a desire, the election for said position to occur on or about June, 1975, and declaration of candidacy as well as campaigning in relation thereto, to commence during the month of April, 1975.

12. That as a result of the above, and if Section 8-14.0b of the Administrative Code in and for the County of Nassau as well as Section 426 subdivision 3 of the Election Law of the State of New York are permitted to remain as currently worded, the Plaintiff, ROBERT G. BURDEWICK, as well as other members of the Police Department, are in danger of suffering great and irreparable harm in that they are not only forced to withdraw from political activities guaranteed under the

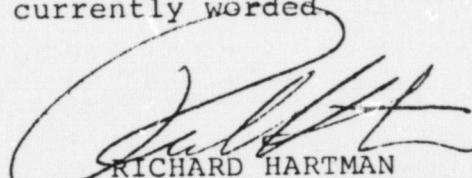
COMPLAINT

Constitution to all citizens, but additionally, are subjected to the loss of job as well as criminal prosecution by pursuing innocent political activities guaranteed every other citizen.

13. By reason of the foregoing, Plaintiff, has been deprived of his constitutional guarantees as set forth in the First and Fourteenth Amendments of the United States Constitution and continues to be so deprived.

WHEREFORE, Plaintiff demands judgment against Defendants declaring that Defendants shall not enforce against the Plaintiff Section 8-14.0b of the Administrative Code in and for the County of Nassau as well as Section 426 subdivision 3 of the Election Law of the State of New York since said sections are unconstitutional as currently worded.

Dated: Mineola, New York
March 3, 1975.



RICHARD HARTMAN
Attorney for Plaintiff
Office & P.O. Address
300 Old Country Road
Mineola, New York 11501

EXHIBIT A, ANNEXED TO COMPLAINT.

§ 426. Misdemeanors concerning police commissioners or officers or members of any police force

Any person who, being a police commissioner or an officer or member of any police force in this state:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a misdemeanor. Added L1965, c. 1031, § 43, eff. Sept. 1, 1967.

11a

EXHIBIT B, ANNEXED TO COMPLAINT.

"8-14.0 Resignation; unexplained absence.

a.....

b. Any member of the police force who shall accept any place of public trust or civil emolument, or shall be publicly nominated for an elective office, and shall not within ten days thereafter publicly decline such nomination, shall be deemed thereby to have vacated his office.

EXHIBIT C, ANNEXED TO COMPLAINT.



NORTH MERRICK

UNION FREE SCHOOL DISTRICT

1775 OLD MILL ROAD
MERRICK, N.Y. 11566
(516) 379-4070

BOARD OF EDUCATION

Madeline Davis
President
Irwin Freeman
Vice President
Norbert Billig
Vincent Guercio
Laurence Lane
Harriet W. Luce
John J. Martin

Harold D. Fayette
Chief School Administrator
J.W. Blend
Treasurer
Herbert J. Krohn
Counsel
Sheila McDonnell
District Clerk

November 15, 1974

Mr. Robert Burdewick
1542 William Street
Merrick, New York 11566

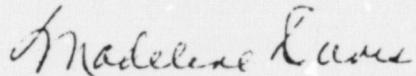
Dear Mr. Burdewick:

Thank you for your recent letter expressing your interest in being considered for the vacancy on the North Merrick School Board.

We would appreciate having the opportunity to discuss your background and experience in greater detail and would like to meet with you on Tuesday, November 26th, at 9:50 p.m. in the Board Room of the Old Mill Road School. Please confirm the time and date by calling Mrs. Sheila McDonnell, our District Clerk, at 546-9119.

If there is additional information concerning your qualifications which you feel would be helpful to us in making our decision, please forward it to us prior to the interview date.

Very truly yours,



Madeline Davis
President

13a

EXHIBIT D, ANNEXED TO COMPLAINT.

POLICE DEPARTMENT
COUNTY OF NASSAU, NEW YORK

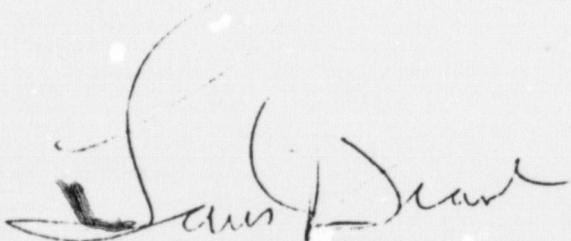
COPY TO

INTERNAL CORRESPONDENCE

DATE November 19, 1974

TO Sergeant R. Burdewick, Shield Number 206, Second Precinct
FROM Commissioner of Police
SUBJECT RULING ON NEW LAW

In response to your inquiry concerning the application of Section 2103-a, of the Education Law, be advised that said statute only permits a police officer to serve as a member of the Board of Education in a school district located within his employing municipality (Nassau County) if there is no existing legislative prohibition. In Nassau County such a prohibition exists and is set forth in Section 8-14.0 of the Nassau County Administrative Code. Consequently, members of the Nassau County Police Department are precluded from serving as a school board member in a school district situated in the County of Nassau.



Louis J. Frank
Commissioner of Police

LJF:ic

NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROBERT G. BURDEWICK, individually and
as representative of the Nassau County
Patrolmen's Benevolent Association,

Civil Action
File No. 75C 350

Plaintiff,

-against-

NOTICE OF MOTION &
MOTION FOR SUMMARY
JUDGMENT

DENIS E. DILLON, District Attorney of
the County of Nassau, State of New York,
RALPH G. CASO, County Executive in and
for the County of Nassau, State of New
York, and LOUIS J. FRANK, Commissioner
of Police, Nassau County of the State
of New York,

Defendants.

-----x

S I R :

PLEASE TAKE NOTICE that the undersigned will move this
court, at Courtroom 4, United States Courthouse, 225 Cadman Plaza
E., Brooklyn, New York, on the 25th day of April, 1975, at 10:00
in the forenoon of that day of as soon thereafter as counsel
can be heard, for an order granting defendants summary judgment
pursuant to Rule 56(b) of the Federal Rules of Civil Procedure
(28 J.S.C.) on the grounds that no factual issues exist,
that §8-14.0(b) of the Nassau County Administrative Code is

NOTICE OF MOTION FOR SUMMARY JUDGMENT

constitutional and that plaintiff is not entitled to the relief requested in his complaint.

Dated: Mineola, New York
March 27, 1975

Yours, etc.,

JOHN F. O'SHAUGHNESSY
County Attorney of Nassau County
Attorney for Defendants
Nassau County Executive Bldg.
Mineola, New York 11501
(516) 535-4408

TC: RICHARD HARTMAN, ESQ.
Attorney for Plaintiff
300 Old Country Road
Mineola, New York 11501

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROBERT G. BURDEWICK, individually and
as representative of the Nassau County
Patrolmen's Benevolent Association,

Plaintiff,
-against-

Civil Action
File No. 75C 350

DENIS E. DILLON, District Attorney of
the County of Nassau, State of New York,
RALPH G. CASO, County Executive in and
for the County of Nassau, State of New
York, and LOUIS J. FRANK, Commissioner
of Police, Nassau County' of the State
of New York,

AFFIDAVIT OF NEIL CAHN
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

Defendants.

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

NEIL CAHN, being first duly sworn, deposes and says:
That I am an attorney duly licensed to practice in the
courts of the State of New York and I am associated with
JOHN F. O'SHAUGHNESSY, County Attorney of Nassau County, attorney
for defendants herein. I make this affirmation in support
of defendants' motion for summary judgment in the above entitled
proceeding and ask this court to grant summary judgment in
favor of defendants dismissing the complaint pursuant to

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Rule 56(b) of the Federal Rules of Civil Procedure (28 U.S.C.)
and to declare §8-14.0(b) of the Nassau County Administrative
Code constitutional.

I am personally familiar with all the material facts
of these proceedings from the papers and documents in my
possession which have come to the office of the County Attorney
of Nassau County.

This action is but one in an extended series of continual
and repeated attempts to invalidate those New York State statutes,
County Charter and Code provides, and Police Department Rules
which in some way restrict the political activities of the
members of the Nassau County Police Department. The issue of
the constitutionality of the Administrative Code provision
attacked herein was last sought to be delcared unconstitutional
in Schmidt v. Caso, (Civil Action File No. 74C 1148) in which
Judge Anthony J. Travia dismissed the complaint for failing
to bring before the court an actual case of controversy.
See also e.g. Lecci v. Cahn, 493 F.2d 826 (2d Cir. 1974).

The complaint in this action does, in the opinion of the
office of the County Attorney, present this court with an
actual case and controversy ripe for adjudication by this court.
It is for that reason that this office has not raised this
ground to attack the complaint.

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiff, Robert G. Burdewick, is a resident of Nassau County and a member of the Police Department of Nassau County. It appears that plaintiff has undertaken steps preliminary to seeking a position on the North Merrick School Board and preliminary to declaring his candidacy to run for said office. In a formal request of the Commissioner of Police, Louis J. Frank, plaintiff advised the Commissioner of his intention to seek the office of member of the Board of Education of the North Merrick School Board. The Commissioner's response, annexed to plaintiff's complaint as Exhibit D, stated that his intended action would be violative of the provisions of §8-14.0 of the Nassau County Administrative Code indicating that any further action on the part of plaintiff to seek such an office would result in a determination that he had vacated his public office as a member of the Police Department of Nassau County.

Although the complaint challenges the constitutionality of §426(3) of the Election Law of the State of New York, in addition to §8-14.0(b) of the Nassau County Administrative Code, it should become clear to this court that the said provision of the Election Law is totally inapplicable to the action herein. Section 2103-a of the Education Law of the State of New York totally excludes from the purview of §426(3) of the Election

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Law a police officer's candidacy for a position on a school
board. Said provision of the Election Law, notwithstanding
any general, special or local law, ordinance or charter provision
to the contrary, allows a policeman to be a candidate for
election and serve as a member of a Board of Education in
school districts other than in the municipality in which they
perform their duties, and unless prohibited by the legislative
body for whom they are employed, in a school district located
in the locality in which he performs his duties.

The Nassau County Code provision attacked herein is
such a local prohibition which would restrict the ability of
a police officer to seek election for and serve as a member
of a Board of Education in a school district within Nassau County.
Thus, it is not §426(3) of the Election Law but rather Nassau
County Code §8-14.0(b) which is the only provision affecting the
action which plaintiff intends to undertake.

There are no factual issues in dispute. The only issue
is whether Nassau County, operating under a Code provision
adopted by the legislature of the State of New York, may
constitutionally prohibit a police officer from seeking election
to and serving as a member of a Board of Education within
Nassau County.

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

It is defendants' contention that the provision under attack is valid on two possibly overlapping yet separate grounds. First, §8-14.0(b) is a restriction on the political activities of a member of the police force. Governmental restriction of the political activities of the government's employees has been declared valid in two 1973 United States Supreme Court decisions: Broadrick v. Oklahoma, 413 U.S. 601 and CSC v. Letter Carriers, 413 U.S. 548.

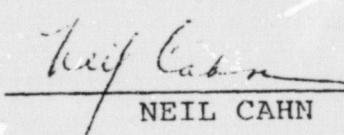
Secondly, a police officer is a public officer and the Code provision represents a legislative statement that the public office of policeman is incompatible with the duties, responsibilities and loyalties of any other public or elected office and that therefore acceptance of a second office should be deemed a resignation of the first. It is a codification of the common law. Incompatibility of public offices results in a vacancy of the first held office.

Although the legislature of the State of New York in adopting §2103-a of the Education Law has made a legislative determination that the political activities of a policeman need not be so restricted as to preclude him from holding a position on a Board of Education in a municipality other than in which he is employed and that such an office would not be incompatible with his office as a policeman, the legislature refrained from

AFFIDAVIT OF NEIL CAHN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
making such a statement with respect to holding an office as a
member of a Board of Education within the municipality in which
he holds an office as a policeman. Any legislative action
with respect to the latter issue is left for local determination.
Nassau County has not determined it to be in the best interests
of its police department or the citizens of the County to allow
a policeman to hold an elected office. Defendants urgently
contend that such a decision is validly within the police power
of a municipality.

Further arguments and bases in law accompany this affidavit
in a memorandum of law.

On the grounds hereinabove stated and in the accompanying
memorandum of law, your deponent requests that this court
grant summary judgment in favor of defendants dismissing the
complaint with prejudice that this court declare §8-14.0(b) of
the Nassau County Administrative Code constitutional and
grant defendants such other and further relief as to this
Court may seem just and proper.


NEIL CAHN

Sworn to before me this 27th
day of March, 1975



JEROME J. BURKE JR.
NOTARY PUBLIC, State of New York
No. 30415533
Qualified in Nassau County
Commission Expires March 30, 1975

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

ROBERT G. BURDEWICK, individually and
as representative of the Nassau County
Patrolmen's Benevolent Association,

Civil Action
No. 75 C 350

Plaintiff

- against -

DENIS E. DILLON, District Attorney of
the County of Nassau, State of New York,
RALPH G. CASO, County Executive in and
for the County of Nassau, State of New
York, and LOUIS J. FRANK, Commissioner
of Police, Nassau County of the State
of New York,

AFFIDAVIT IN
SUPPORT

Defendants

X

STATE OF NEW YORK) ss.:
COUNTY OF NASSAU)

LOUIS J. FRANK, being duly sworn, deposes and says:

Your deponent is the Commissioner of the Nassau
County Police Department and is familiar with the facts herein
based upon personal information and a review of the files and
records maintained by the Nassau County Police Department.

This affidavit is submitted in opposition to the
plaintiff's claim that he should be permitted to engage in a
campaign for an elected office, and accept such position if
elected, to wit: a position on the School Board of North Merrick.

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

It is clear that should this Police Officer be allowed to accept such a position, the integrity and effectiveness of this Department and of that Police Officer may be seriously damaged. Unlike employees in private industry, or even non-police public servants, the Police Officer stands in a unique position in the community. His duties often entail negotiation, mediation and resolution of disputes of all kinds concerning all groups of citizens. It often results that he is the only officially "neutral" citizen on the scene of a dispute and these disputes are often emotionally heated and sometimes violent. A Police Officer is looked upon by the members of the community as an impartial figure and it is because of this neutral image that a Police Officer must not become involved in these potentially emotional school board issues. If it becomes known that Police Officers have become aligned with one group or another on a school board issue, this may destroy his effectiveness as a Police Officer. The real or perceived threat of an unfair response by a Police Officer will quickly permeate the community and lessen the effectiveness of the officer.

This will not only hamper the officer actually involved actively on the scene, but also every other officer attempting to perform his duties. This is because of the dual

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

reasons that the public naturally tends to impute the attributes and practices of one member of a large homogenous group to the other members of the same group and because, if it is known that some members of the Police Department are engaged in partisan school board issues, anyone coming into contact with a member of that Department will have reason to believe that this officer may be one of the partisan members whether he is or not. Public confidence in the office and his department will be badly shaken if his neutrality in the eyes of the public disappears. There is no doubt that this factor will quickly evaporate if this officer and others enter the arena of school board politics.

Entry into school board activity will be detrimental in other respects too. Police Officers, because of their authority to arrest and to use force, possess inherent, coercive power over the lives of our citizens. A Police Officer engaged in school board activities off duty in support of a particular position may receive the support of citizens not because of the persuasiveness of his argument, but because of the authority he has as a Police Officer and the uniform that he wears while on duty. This will result in a chilling effect on the first amendment rights of the citizens whom he must serve as a member of the school board.

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

It is evident that when members of a law enforcement agency are permitted to engage in school board elections and school board activity, if elected thereto, discipline could be seriously eroded in the agency. An officer's association with a particular school board group or idea can become the controlling factor in determining whether discipline will be employed. Superiors may be unwilling or unable to exact the proper performance of duty. This is because a person's board position may control the feelings and performance of his immediate superiors. The effect that this situation may have upon discipline, morale and efficiency in the Department is devastating.

Election to the position on the school board, which this officer desires to attain, will at times put him in direct conflict with the Department on an official basis. The possibility of conflict of interest or conflict in actions in a situation such as this is unavoidable, undesirable and damaging to his position, both as a board member and as a Police Officer. It also may compromise actions of the police officers at the scene of a school related dispute in their official capacity when the police officer-school board member is also at that scene in his capacity as a board member.

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Moreover, the policemen's entry into the electoral arena would similarly jeopardize the Police Department's efficiency and integrity and create conflicts. Any neutral position which is sought by the Police Department cannot be maintained while its members are actively soliciting the votes of those citizens which the Police Department serves. The very nature of elections in crystalizing issues and polarizing public opinion is directly contrary to the proper role which the Police Department must take in apolitically enforcing the laws of the State of New York.

It is clear that any school board activity such as this Police Officer would like to engage in would sully the reputation of the Police Department, diminish the professional pride of our officers, undermine our disciplinary procedures, cause professional conflicts and introduce temptation and opportunity for an officer to betray his public trust and compromise his position as society's impartial lawkeeper.

Louis J. Frank

Sworn to before me this
2nd day of May, 1975.

AFFIDAVIT OF ALLEN R. MORGANSTERN IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT.UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROBERT G. BURDEWICK, individually and as
representative of the Nassau County
Patrolmen's Benevolent Association,: Civil Action
Plaintiff, : Index No. 75 C 350

- against -

: AFFIDAVIT IN
DENIS E. DILLON, District Attorney of : OPPOSITION TO
the County of Nassau, State of New York, : DEFENDANTS' MOTIONRALPH G. CASO, County Executive in and
for the County of Nassau, State of New
York, and LOUIS J. FRANK, Commissioner
of Police, Nassau County of the State
of New York,

:

Defendants. :
-----xSTATE OF NEW YORK)
COUNTY OF NASSAU) ss:ALLEN R. MORGANSTERN, being duly sworn, deposes and
says:

1. That he is an attorney duly licensed to practice law in the State of New York and is an associate in the law firm of RICHARD HARTMAN, ESQ., the attorney for the Plaintiff herein, and is fully familiar with all the facts and circumstances heretofore had herein with regard to the above captioned matter.

2. This Affidavit is being submitted in opposition to the Defendants' motion seeking an order pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure dismissing the action against the Defendants, DENIS E. DILLON, District Attorney of the County of Nassau, State of New York, RALPH G. CASO, County Executive in and for the County of Nassau, State of New York, and LOUIS J. FRANK,

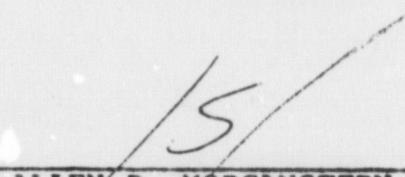
AFFIDAVIT OF ALLEN R. MORGANSTERN IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT

Commissioner of Police, Nassau County of the State of New York, on the grounds that no factual issues exist, that Section 8-14.0 (b) of the Nassau County Administrative Code is constitutional and that Plaintiff is not entitled to the relief requested in his complaint.

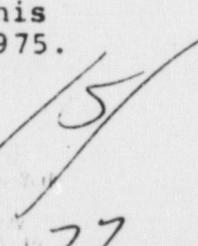
Plaintiff opposes the relief sought by Defendants in said motion papers based upon the grounds more fully set forth in accompanying Memorandum of Law.

WHEREFORE, Plaintiff respectfully submits to this Court that for the reasons set forth in Plaintiff's accompanying Memorandum of Law, Defendants' motion seeking to dismiss the cause of action brought by Plaintiff against the Defendants, DENIS E. DILLON, District Attorney of the County of Nassau, State of New York, RALPH G. CASO, County of Nassau, State of New York, and LOUIS J. FRANK, Commissioner of Police, Nassau County of the State of New York, should in fact be denied in every respect.

DATED: Mineola, New York
April 22, 1975


ALLEN R. MORGANSTERN

Sworn to before me this
22nd Day of April, 1975.


RICHARD D. JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 39-10000
Qualified in Nassau County
Commissioned April 1, 1974
Expires April 1, 1976

77

MEMORANDUM DECISION AND ORDER.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROBERT G. BURDEWICK, individually :
and as representative of the
Nassau County Patrolmen's
Benevolent Association,

Plaintiff,

-against-

DENIS E. DILLON, District Attorney : 75-C-350
of the County of Nassau, State of
New York. RALPH G. CASO, County
Executive in and for the County of
Nassau, State of New York, and
LOUIS J. FRANK, Commissioner of
Police, Nassau County of the State
of New York,
Defendants.

-----x

Appearances:

RICHARD HARTMAN, ESQ.
Attorney for Plaintiff
300 Old Country Road
Mineola, New York 11501
ALLEN R. MORGANSTERN, ESQ.
Of Counsel

JOHN F. O'SHAUGHNESSY, ESQ.
County Attorney of Nassau County
Attorney for Defendants
Nassau County Executive Building
West Street
Mineola, New York 11501
LOUIS SCHULTZ, ESQ.
Senior Deputy County Attorney
NEIL CAHN, ESQ.
Law Clerk
Of Counsel

MEMORANDUM DECISION AND ORDER

BARTELS, D.J.

Plaintiff, a sergeant in the Nassau County Police Department, notified the County Police Commissioner in November, 1974, that he wished to be a candidate for election to the North Merrick School Board. The Commissioner informed him that he was barred from seeking the position by Section 8-14.0(b) of the Nassau County Administrative Code. Plaintiff now seeks, by means of summary judgment, a declaration of the unconstitutionality of Section 8-14.0(b) and also of Section 426(3) of the New York Election Law (McKinney's Supp., 1974-1975), on the ground that both, by prohibiting his candidacy, violate his First and Fourteenth Amendment rights. Defendants cross-claim for summary judgment asserting that (1) Section 8-14.0(b) is constitutional and (2) Section 426(3) of the Election Law is inapplicable.

I

SECTION 8-14.0(b) of the ADMINISTRATIVE CODE

The above section reads as follows:

"Any member of the police force who shall accept any place of public trust or civil emolument, or shall be publicly nominated for an elective office, and shall not within ten days thereafter publicly decline

MEMORANDUM DECISION AND ORDER

such nomination, shall be deemed thereby to have vacated his office."

Such a provision is authorized under Section 2103-a of the New York Education Law (McKinney's Supp., 1974-1975), expressly permitting policemen to be candidates for election to and to serve on boards of education unless "prohibited by the legislative body for whom they are employed, in school districts located in the locality where they perform their duties as policemen" The North Merrick School District is located within Nassau County where plaintiff performs his duties.

In the absence of any showing that such a restriction is necessary to promote a compelling governmental interest, plaintiff claims that Section 8-14.0(b) amounts to an unconstitutional restriction on his fundamental rights as a public employee to seek a second public office, citing Shapiro v. Thompson, 394 U.S. 618 (1969), and Keyishian v. Board of Regents, 385 U.S. 589 (1967). In reply, defendants claim that such a restriction is justified on the authority of United Public Workers v. Mitchell, 330 U.S. 75 (1947), which upheld the much broader restrictions of the Hatch Act, 5 U.S.C.A. § 7324, upon the rights of federal employees to

MEMORANDUM DECISION AND ORDER

engage in partisan political activities. There the court in applying a "rational nexus" analysis to the Hatch Act, stated:

"For regulation of employees it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the public service." 330 U.S. at 101.

This holding was specifically reaffirmed in United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973), where the court added inter alia that an act of Congress plainly forbidding a public employee to become "a partisan candidate for, ... an elective public office ..." would "unquestionably be valid . . ." 413 U.S. at 556. To the same effect see Broadrick v. Oklahoma, 413 U.S. 601 (1973). The rationale of these cases is equally applicable to police officers. Perry v. St. Pierre, ___ F.2d ___, slip op. 3831 (2d Cir., May 29, 1975); Paulos v. Breier, 507 F.2d 1383 (7th Cir. 1974).

Defendants have shown through the uncontroverted affidavit of the Nassau County Police Commissioner that the interest of the County in keeping its police officers apart from partisan school board politics outweighs the interest of the plaintiff in serving a dual role as a police officer

MEMORANDUM DECISION AND ORDER

and a school board member. A police officer, unlike other public employees, stands in a unique position in the community. His role not only requires him to enforce the law but also may often entail negotiation, mediation and resolution of various disputes between groups of citizens. In order to be effective in such a role he must be viewed by the public as impartial and officially neutral. Accordingly, an officer has a duty to refrain from publically taking sides in partisan political disputes. We cannot ignore the fact that school boards are frequently engaged in vigorous and sometimes bitter controversies over various issues. Participation by an officer, either on or off duty, on one side or another of such a dispute may conflict with his duty to impartially enforce the law and may even identify the department in the mind of the public with that position and may have a divisive effect on the force. The mere presence of a police officer on the school board may tend to chill the free and robust discussion of controversial issues. We conclude, therefore, that the prohibition contained in Section 8-14.0(b) serves a governmental interest by protecting the integrity and effectiveness of the police force and at the same time the freedom of the political process.

MEMORANDUM DECISION AND ORDER

In so doing it is plainly reasonable and constitutional. See Lecci v. Looney, 33 A.D.2d 916, 307 N.Y.S.2d 594 (2d Dept. 1970), leave to appeal denied, 26 N.Y.2d 612 (1970); Boyle v. Kirwin, 39 A.D.2d 993, 333 N.Y.S.2d 446 (3d Dept. 1972).

II

SECTION 426(3) of the NEW YORK ELECTION LAW

This section reads as follows:

"Any person who, being a police commissioner or an officer or member of any police force in this state:

...
3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,
Is guilty of a misdemeanor."

In barring plaintiff's candidacy the Commissioner did not refer to this section and it is difficult to understand why the plaintiff in this action seeks a declaration of its unconstitutionality. In the first place, it is difficult to understand that the mere candidacy of a police officer would violate this section. In the second place, Section 2103-a of the Education Law expressly permits police

MEMORANDUM DECISION AND ORDER

officers to be candidates for and to serve as board members unless "prohibited by the legislative body for whom they are employed, in school districts located in the locality where they perform their duties as policemen . . ." Thus plaintiff's candidacy is not prohibited by Section 426(3) of the Election Law or Section 2103-a of the Education Law but by Section 8-14.0(b) of the County Administrative Code, which we find to be constitutional.

Accordingly, defendants' motion for summary judgment is granted. Complaint dismissed.

SO ORDERED.

Dated: Brooklyn, N.Y.,
August 15, 1975.


John R. Partely
United States District Judge

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

ROBERT G. BURDEWICK, individually and as
representative of the Nassau County
Patrolmen's Benevolent Association,

Plaintiff, : Civil Action # 75-C350

- against -

: NOTICE OF APPEAL.

DENIS E. DILLON, District Attorney of the
County of Nassau, State of New York, RALPH
G. CASO, County Executive in and for the
County of Nassau, State of New York, and
LOUIS J. FRANK, Commissioner of Police,
Nassau County or the State of New York,

Defendants.

----- X

S I R S:

PLEASE TAKE NOTICE that the Plaintiff, ROBERT C. BURDEWICK,
individually and as representative of the Nassau County Patrolmen's
Benevolent Association, herein appeals to the United States Court of
Appeals for the Second Circuit from the judgment and order made by the
Honorable John R. Bartels on the 15th day of August, 1975, and entered
herein on the 18th day of August, 1975.

DATED: Mineola, New York
August 27, 1975

Yours, etc.,

RICHARD HARTMAN
Attorney for Plaintiff
300 Old Country Road
Mineola, New York 11501
(516) 742-9000

TO: JOHN F. O'SHAUGHNESSY, ESQ.
County Attorney of Nassau County
Nassau County Executive Building
West Street
Mineola, New York 11501

United States Court of Appeals
for the Second Circuit

376—Affidavit of Service by Mail The Reporter Co., Inc., 11 Park Place, New York, N.Y. 10007

Robert G. Burdwick, individually and as representative of the Nassau County Patrolman's Benevolent Association,

Plaintiff-Appellant

against

Dennis E. Dillon, District Attorney County of Nassau, State of New York
Ralph G. Caso, County Executive in and for the County of Nassau, State of New York and Louis J. Frank, Commissioner of Police, Nassau County of the State of New York

Defendants-Appellees

On appeal from the United States District Court for the Eastern District of New York,

State of New York, County of New York, ss.:

Raymond J. Braddick, being duly sworn deposes and says that he is agent for Hartman & Alpert Esqs.

for the above named Plaintiff-Appellant the attorney is herein. That he is over 21 years of age, is not a party to the action and resides at 8 Mill Lane Levittown, New York

That on the 15th day of October, 1975, he served the within

Brief and Appendix

upon the attorneys for the parties and at the addresses as specified below

John F. O'Shaughnessy
County Attorney of Nassau County
Nassau County Executive Building
West Street
Mineola, New York

by depositing 3 copies of each

to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly maintained by the United States Government at

90 Church Street, New York, New York

directed to the said attorneys for the parties as listed above at the addresses aforementioned, that being the addresses within the state designated by them for that purpose, or the places where they then kept offices between which places there then was and now is a regular communication by mail.

Sworn to before me, this 15th.

day of October, 1975.

ROLAND W. JOHNSON,
Notary Public, State of New York

No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1977

Raymond J. Braddick

Robert W. Johnson

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